REMARKS

Paragraph 0016 of the Specification has been amended to correct a typographical error. No new matter was added by this amendment.

Claims 1 and 22 are amended. No new matter was added. Support for the amendment to claim 1 may be found in at least paragraph 0015 and 0016 of the application. Support for the amendment to claim 22 may be found in at least paragraph 0012 of the application.

I.   Claims 1-6, 19-20, and 22 Are Allowable

The Office has rejected claims 1-6, 19-20, and 22, at paragraphs 1-2 of the Office Action, under 35 U.S.C. § 102, as being anticipated by U.S. Patent No. 6,985,444 ("*Rosen*"). Applicant(s) respectfully traverse the rejections.

For a reference to anticipate a claim, the reference must teach every element of the claim. *Rosen* does not anticipate claim 1, because *Rosen* does not teach every element of claim 1. For example, *Rosen* does not teach "selecting, from the first profile and the second profile, a profile that has the highest estimated data packet throughput value to be applied to the digital subscriber line based on a comparison of the first estimated data packet throughput value and the second estimated data packet throughput value", as recited in claim 1. The Office asserts that this feature is taught by column 14, lines 9-20, and Figure 3 of *Rosen*. However, neither the cited paragraph, nor any other portion of *Rosen*, teaches "selecting, from the first profile and the second profile, a profile that has the highest estimated data packet throughput value to be applied to the digital subscriber line based on a comparison of the first estimated data packet throughput value and the second estimated data packet throughput value".

In contrast to claim 1, *Rosen* discloses a method and apparatus for performing line qualification tests, and binning the results of such testing. In *Rosen*, a next service category is selected (Figure 3, #90), a next modem model is selected (Figure 3, #100), a next noise model is selected (Figure 3, #110), and then a determination is made as to whether the line can support the service package (Figure 3, #120). Thus, with *Rosen*, many different combinations of service categories, modem models, and noise models are selected and tested. In *Rosen*, after all the

different combinations of service categories, modem models, and noise models have been selected and tested, the line is categorized in one of four categories (Figure 3, #135, #145, #155, #160).

However, *Rosen* does not teach "selecting, from the first profile and the second profile, a profile that has the highest estimated data packet throughput value to be applied to the digital subscriber line based on a comparison of the first estimated data packet throughput value and the second estimated data packet throughput value", as recited in claim 1. Thus, *Rosen* does not teach every element of claim 1. Therefore, claim 1 is allowable. Claims 2-6 depend from claim 1, which Applicants have shown to be allowable. Accordingly, claims 2-6 are also allowable.

Similarly, Rosen does not anticipate claim 19, because *Rosen* does not teach every element of claim 19. For example, *Rosen* does not teach "selecting a profile for each digital subscriber line in the group of digital subscriber lines wherein each profile is selected based on the estimated data packet throughput values", as recited in claim 19. The Office asserts that this feature is taught by column 14, lines 9-20, and Figure 3 of *Rosen*. However, neither the cited paragraph, nor any other portion of *Rosen* teaches "selecting a profile for each digital subscriber line in the group of digital subscriber lines wherein each profile is selected based on the estimated data packet throughput values".

Therefore, claim 19 is allowable, because *Rosen* does not teach every element of claim 19. Claims 20 and 22 depend from claim 19, which Applicants have shown to be allowable. Accordingly, claims 20 and 22 are also allowable.

II.   Claims 7-18, 21, 23-25 Are Allowable

The Office has rejected claims 7-18, 21, 23-25 under 35 U.S.C. § 103(a), as being obvious, citing eight disparate references. Applicants respectfully traverse these rejections. Applicants submit that the Examiner has used impermissible hindsight to pick and choose isolated elements from the references, using Applicants' application as a template, in attempting to argue that the claims are obvious. *See* In re Fritch, 972 F. 2d 1260, 23 USPQ2d 1780 at 1783-

84 (Fed. Cir. 1992). Moreover, as shown below, claims 7-18, 21, and 23-25 are not obvious in view of the references, and are therefore allowable.

The Office has rejected claim 7 under 35 U.S.C. § 103(a), as being obvious over U.S. Patent No. 6,985,444 ("*Rosen*"), in view of U.S. Patent Application No. 2003/0189977 ("*Sweitzer*"). However, the Office has failed to provide a *prima facie* case of obviousness for claim 7, which depends from claim 1. As stated above, *Rosen* does not teach every element of claim 1. Similarly, *Sweitzer* does not teach or suggest "selecting, from the first profile and the second profile, a profile that has the highest estimated data packet throughput value to be applied to the digital subscriber line based on a comparison of the first estimated data packet throughput value and the second estimated data packet throughput value", as recited in claim 1.

In contrast to claim 1, *Sweitzer* discloses a method of switching a first data rate by transmitting a discovery message, receiving a discovery response, transmitting a probe message, transmitting a first probe signal, receiving a probe message response, receiving a second probe signal, negotiating the first data rate, synchronizing at the first data rate, measuring a line quality at the first data rate, determining a second data rate based on the line quality, transmitting a rate change request, including the second data rate, and re-synchronizing at the second data rate. *Sweitzer*, Abstract.

However, *Sweitzer* does not teach or suggest "selecting, from the first profile and the second profile, a profile that has the highest estimated data packet throughput value to be applied to the digital subscriber line based on a comparison of the first estimated data packet throughput value and the second estimated data packet throughput value", as recited in claim 1. Thus, *Sweitzer* does not teach every element of claim 1. Therefore, neither *Rosen* nor *Sweitzer*, individually or in combination, teach or suggest every element of claim 1. Therefore, the Office has failed to provide a *prima facie* case of obviousness for claim 1. Therefore, claim 7, which depends from claim 1, is allowable.

The Office has rejected claim 8 as being obvious over *Rosen*, in view of U.S. Patent No. 6,498,808 ("*Tzannes*"). However, the Office has failed to provide a *prima facie* case of

obviousness for claim 8, which depends from claim 1. As stated above, *Rosen* does not teach every element of claim 1. Similarly, *Tzannes* also does not teach every element of claim 1. *Tzannes* teaches a method for seamlessly changing a transmission bit rate in a multicarrier communication system, the method comprising: providing a plurality of codewords (i) having a specified codeword size, and (ii) including a specified number of parity bits for forward error correction, providing a specified interleaving parameter for interleaving the plurality of codewords, transmitting a first plurality of codewords at a first transmission bit rate, and seamlessly transitioning to transmitting a second plurality of codewords at a second transmission bit rate. *Tzannes*, Abstract.

However, *Tzannes* does not teach or suggest "selecting, from the first profile and the second profile, a profile that has the highest estimated data packet throughput value to be applied to the digital subscriber line based on a comparison of the first estimated data packet throughput value and the second estimated data packet throughput value", as recited in claim 1. Therefore, neither *Rosen* nor *Tzannes*, individually or in combination, teach or suggest every element of claim 1. Therefore, the Office has failed to provide a *prima facie* case of obviousness for claim 1. Accordingly, claim 8, which depends from claim 1, is allowable.

The Office has rejected claims 9, 23, and 24 under 35 U.S.C. § 103(a), as being obvious over *Rosen*, in view of U.S. Patent No. 6,445,773 ("*Liang*"). However, the Office has failed to provide a *prima facie* case of obviousness for claims 9, 23, and 24. However, *Rosen* does not teach every element of claim 1. In contrast to claim 1, *Liang* teaches a "method for performing a DMT test to determine cable data rates using two test devices, *without employing ADSL modems*, on a telephone cable or a local loop cable for ADSL application". *Liang*, Abstract (emphasis added). In contrast, *Rosen* teaches that "*[a] modem is required* at the subscriber end of the line. *A second modem is required* at the central office or Digital Loop Concentrator (DLC) at the other end of the line". *Rosen*, col. 7, ll. 65-67 (emphasis added). Therefore, applying *Liang* to *Rosen* would result in removal of the modems required by *Rosen*, rendering the resulting combination inoperable. Thus, the Office has failed to provide a *prima facie* case of obviousness for claims 9, 23, and 24. Accordingly, claims 9, 23, and 24 are allowable.

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The Office has rejected claims 10, 14, and 15 under 35 U.S.C. § 103(a), as being obvious over *Rosen*, in view of *Tzannes*, and *Liang*. However, combining *Liang* and *Rosen* results in *Liang* removing the modems required by *Rosen*, resulting in an inoperable combination. Thus, the Office has failed to provide a *prima facie* case of obviousness for claims 10, 14, and 15. Accordingly, claims 10, 14, and 15 are allowable.

The Office has rejected claims 11-13 as being obvious over *Rosen*, in view of U.S. Patent No. 6,678,245 ("*Cooper*"). However, the Office has failed to provide a *prima facie* case of obviousness for claims 11-13, which depend from claim 1. *Rosen* does not teach every element of claim 1. Similarly, *Cooper* does not teach or suggest "selecting, from the first profile and the second profile, a profile that has the highest estimated data packet throughput value to be applied to the digital subscriber line based on a comparison of the first estimated data packet throughput value and the second estimated data packet throughput value", as recited in claim 1.

In contrast to claim 1, *Cooper* discloses "a performance management operations system (PMOS) that receives information from network elements concerning load carries and lost packets, receives threshold and other parameter information for a network management console, performs various calculations on the received information, and develops recommendations for setting of adjustable network elements controls that affect the quality of service that those elements provide". *Cooper*, Abstract. However, *Cooper* does not teach or suggest "selecting, from the first profile and the second profile, a profile that has the highest estimated data packet throughput value to be applied to the digital subscriber line based on a comparison of the first estimated data packet throughput value and the second estimated data packet throughput value", as recited in claim 1. Neither *Rosen* nor *Cooper*, individually or in combination, teach or suggest every element of claim 1. The Office has thus failed to provide a *prima facie* case of obviousness for claim 1. Therefore, claims 11-13, which depend from claim 1, are allowable.

The Office has rejected claims 16, 17, and 21 as being obvious over *Rosen*, in view of U.S. Patent No. 7,218,645 ("*Lotter*"). However, the Office has failed to provide a *prima facie* case of obviousness for claims 16, 17, and 21, which depend from claim 1. *Rosen* does not teach every element of claim 1. Similarly, *Lotter* does not teach or suggest "selecting, from the first

profile and the second profile, a profile that has the highest estimated data packet throughput value to be applied to the digital subscriber line based on a comparison of the first estimated data packet throughput value and the second estimated data packet throughput value", as recited in claim 1.

In contrast to claim 1, *Lotter* discloses "[o]ptimizing a radio link by acquiring at least OSI layer one and two performance measurements, determining an optimum setting collection for at least OSI layer three to a top layer, then configuring at least the OSI layer three to the top layer based upon the optimum setting collection". *Lotter*, Abstract. However, *Lotter* does not teach every element of claim 1. Neither *Rosen* nor *Lotter*, individually or in combination, teach or suggest every element of claim 1. The Office has thus failed to provide a *prima facie* case of obviousness for claim 1. Accordingly, claims 16, 17, and 21, which depend from claim 1, are allowable.

The Office has rejected claim 18 as being obvious over *Rosen*, in view of U.S. Application No. 2003/0033262 ("*Aoki*"). However, the Office has failed to provide a *prima facie* case of obviousness for claim 18, which depends from claim 1. *Rosen* does not teach every element of claim 1. Similarly, *Aoki* does not teach or suggest "selecting, from the first profile and the second profile, a profile that has the highest estimated data packet throughput value to be applied to the digital subscriber line based on a comparison of the first estimated data packet throughput value and the second estimated data packet throughput value", as recited in claim 1.

In contrast to claim 1, *Aoki* discloses a "line connection controller includes a line switching device which switches connection between a subscriber line and a high-speed line, and switching equipment which controls the line switching device in accordance with a request from a subscriber". *Aoki*, Abstract. However, *Aoki* does not teach or suggest "selecting, from the first profile and the second profile, a profile that has the highest estimated data packet throughput value to be applied to the digital subscriber line based on a comparison of the first estimated data packet throughput value and the second estimated data packet throughput value", as recited in claim 1. Neither *Rosen* nor *Aoki*, individually or in combination, teach or suggest every element

of claim 1. Therefore, the Office has failed to provide a *prima facie* case of obviousness for claim 1. Accordingly, claim 18, which depends from claim 1, is allowable.

The Office has rejected claim 25 under 35 U.S.C. § 103(a), as being obvious over *Rosen*, in view of *Liang*. However, combining *Liang* and *Rosen* results in *Liang* removing the modems required by *Rosen*, resulting in an inoperable combination. Thus, the Office has failed to provide a *prima facie* case of obviousness for claim 25. Accordingly, claim 25 is allowable.

CONCLUSION

Applicants have pointed out specific features of the claims not disclosed, suggested, or rendered obvious by the references applied in the Office Action. Accordingly, Applicants respectfully requests reconsideration and withdrawal of each of the objections and rejections, as well as an indication of the allowability of each of the pending claims.

Any changes to the claims in this amendment, which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

The Examiner is invited to contact the undersigned attorney at the telephone number listed below if such a call would in any way facilitate allowance of this application.

The Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment, to Deposit Account Number 50-2469.

Respectfully submitted,

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Date

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